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after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

**PART 1470—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM**

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AUTHORITY: Sec. 811, Pub. L. 106-387, 114 Stat. 1549; Sec. 741, Pub. L. 107-76, 115 Stat. 704; Sec. 102, Pub. L. 107-117, 115 Stat. 2230; Sec. 10105, Pub. L. 107-171, 116 Stat. 489.

SOURCE: 66 FR 13843, Mar. 8, 2001, unless otherwise noted.

**Subpart A—Apple Market Loss Payment Program**

**§ 1470.1 Applicability.**

(a) The regulations in this subpart are applicable to producers of 1998 and 1999 crop of apple production. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program in accordance with section 811 of Public Law 106-387. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

**§ 1470.2 Administration**

(a) The Apple Market Loss Payment Program shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by State and county Farm Service Agency committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

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(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the Apple Market Loss Assistance Payment program and does not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

### § 1470.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Apple Market Loss Assistance Payment program established by this subpart.

*Apple Operation* means any person or group of persons who as a single unit as determined by CCC, produce and market apples in the United States and which has elected to participate in the program authorized by the part.

*Application* means Form CCC-891, the Apple Market Loss Assistance Payment Application.

*Application period* means March 5, 2001 through April 13, 2001.

*Commodity Credit Corporation or CCC* means the Commodity Credit Corporation.

*County committee* means the FSA county committee.

*County office* means the local FSA office.

*Department or USDA* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency or a designee.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Eligible production* means apples that had been produced in the United States anytime during the 1998 and or 1999 crop year, subject to a maximum of 1,600,000 pounds per apple operation.

*Higher production year* means the crop year, either 1998 or 1999, as selected by the apple operation, during which apples were produced.

*Payment pounds* means the pounds of apples for which an operation is eligible to be paid under this subpart.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

*United States* means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

*Verifiable production records* means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

### § 1470.4 Time and method of application.

(a) Apple producers may obtain an application, Form CCC-891 (Apple Market Loss Assistance Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the CCC-891 at <http://www.sc.egov.usda.gov>.

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(b) A request for benefits under this subpart must be submitted on a completed Form CCC-891. The Form CCC-891 should be submitted to the county FSA office serving the county where the apple operation is located but, in any case, must be received by the county FSA office by the close of business on April 13, 2001. Applications not received by the close of business on April 13, 2001, will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in an apple operation's total production must certify on the same CCC-891 in order to obtain the maximum eligible quantity of the higher crop year of 1998 and 1999 of the apple operation before the application is complete.

(d) The apple operation requesting benefits under this subpart must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

### § 1470.5 Eligibility.

(a) To be eligible to receive cash payment under this subpart, an apple operation must:

(1) Have produced apples in the United States anytime during the 1998 and/or 1999 crop year;

(2) Not have been compensated for the same market loss by any other Federal programs, except an indemnity provided under a policy or plan or insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501).

(3) Apply for payments during the application period.

(b) Payments may be made for losses suffered by an eligible producer who is

now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

### § 1470.6 Proof of production.

(a) Apple operations selected for spot-checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the apples produced during the 1998 and/or 1999 crop year to verify the higher year of production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The pounds of 1998 or 1999 crop year production must be documented using actual records developed at the time of production.

(b) All persons involved in an apple operation producing apples during the 1998 or 1999 crop year shall provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on Form CCC-891. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, the apple operation will be determined ineligible for benefits.

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### § 1470.7 Availability of funds.

The total available program funds shall be \$99.78 million as provided by Section 811 of Public Law 106-387 and amended by Section 1403 of Public Law 106-554.

### § 1470.8 Applicant payment quantity.

(a) The applicant's payment quantity of apples will be determined by the CCC, based on the higher production of 1998 or 1999 crop of apples that was produced by each operation, as selected by the apple operation.

(b) The maximum quantity of the 1998 or 1999 crop of apples for which producers are eligible for a payment for an operation under this subpart shall be 1,600,000 pounds.

### § 1470.9 Payment rate and apple operation payment.

(a) Payments under this subpart may be made to apple operations only up to 1,600,000 pounds of apples produced in the United States during the higher production year of 1998 or 1999. A payment rate will be determined after the conclusion of the application period, and shall be calculated by:

(1) Totaling the higher production of the eligible quantity (not to exceed 1,600,000 pounds) of apples produced from the 1998 or 1999 crop year from all approved applications; and

(2) Dividing the amount available for the Apple Market Loss Assistance Payment program by the total pounds of eligible production submitted and approved for payment (the quantity determined under paragraph (a)(1) of this section).

(b) Each apple operation payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

### § 1470.10 Offsets.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of

title under State law, and without regard to any claim or lien against an operation, an operation's apple production, or proceeds thereof, in favor of the producer or any other creditors, including agencies of the U.S. Government.

(b) Payments received by an apple operation under this part are not subject to administrative offsets or withholdings, including administrative offset under chapter 37 of title 31, United States Code, as provided by Public Law 106-387.

(c) The regulations governing offsets and withholdings found at 7 CFR Part 1403 shall not be applicable to this part.

### § 1470.11 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

### § 1470.12 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC, with interest together with such other sums as may become due. Any apple operation or person engaged in acts prohibited by this section and any apple operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due

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under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

#### **§ 1470.13 Estates, trusts, and minors.**

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 1470.14 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this title may receive such benefits, as determined appropriate by CCC.

#### **§ 1470.15 Maintaining records.**

Apple operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments received plus interest thereon, as determined by CCC. Nothing in this section, shall, however, authorize the destruction of any

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records where there is an on-going dispute or where the party involved has reason to know that such records remain material to the operation of the program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

#### **§ 1470.16 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to CCC shall otherwise become due in connection with the application, or this part, all payments made under this part to any apple operation shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be applicable to refunds required of any person under this part if CCC determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the CCC for funds, from the date CCC made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of CCC alone for refunds resulting from those violations determined by CCC to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance

with the provisions of, and subject to the rates prescribed in, 7 CFR part 1403.

(f) Any excess payments made by CCC with respect to any application under this part must be refunded.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

### **Subpart B—Apple Market Loss Assistance Payment Program II**

SOURCE: 67 FR 57720, Sept. 12, 2002, unless otherwise noted.

#### **§ 1470.101 Applicability.**

(a) The regulations in this subpart are applicable to producers of the 2000 crop of apples. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program II in accordance with section 741 of Public Law 107-76, as amended by Public Law 107-117. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

#### **§ 1470.102 Administration.**

(a) The Apple Market Loss Assistance Payment Program II shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of the Apple Market Loss Assistance Payment Program II and does not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

#### **§ 1470.103 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering the Apple Market Loss Assistance Payment Program II established by this subpart.

*Administrator* means the FSA Administrator.

*Apple operation* means any person or group of persons who, as a single unit as determined by CCC, produces and market apples in the United States.

*Application* means Form CCC-891, the Apple Market Loss Assistance Payment Application.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits.

*CCC* means the Commodity Credit Corporation.

*County committee* means the FSA county committee.

*County office* means the local FSA office.

*Department or USDA* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Eligible production* means apples that were produced and harvested in the United States anytime during the 2000 crop year, up to a maximum of 5,000,000 pounds per apple operation.

*Payment pounds* means the pounds of apples for which an operation is eligible to be paid under this subpart.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

*Secretary* means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

*United States* means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

*Verifiable production records* means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

**§ 1470.104 Time and method of application.**

(a) Apple producers may obtain an application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the application at <http://www.sc.egov.usda.gov>.

(b) A request for benefits under this subpart must be submitted on a completed application as defined in § 1470.103. Applications should be sub-

mitted to the FSA county office serving the county where the apple operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in the risk of an apple operation's total production must certify to the information on the application before the application will be considered complete.

(d) The apple operation requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

**§ 1470.105 Eligibility.**

(a) To be eligible to receive a payment under this subpart, an apple operation must:

(1) Have produced and harvested apples in the United States at some time during the 2000 crop year;

(2) Not have been compensated for the same market loss by any other Federal programs, except an indemnity provided under a policy or plan of insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501).

(3) Apply for payments during the application period.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint

venture, all members of the general partnership or joint venture at the time of dissolution, or their duly authorized representatives must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) All payments under this part are subject to the availability of funds.

#### **§ 1470.106 Proof of production.**

(a) Apple operations selected for spot checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the apples produced and harvested during the 2000 crop year to verify production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The 2000 crop year production must be documented using actual records.

(b) All persons involved in such apple operation producing apples during the 2000 crop year shall provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on the application. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, apple operations will be determined ineligible for benefits.

#### **§ 1470.107 Availability of funds.**

The total available program funds shall be \$75 million as provided by section 741 of Public Law 107-76 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

#### **§ 1470.108 Applicant payment quantity.**

(a) The applicant's payment quantity of apples will be determined by CCC, based on the production of the 2000 crop of apples that was produced and harvested by each operation.

(b) The maximum quantity of apples for which producers are eligible for a payment under this subpart shall be 5,000,000 pounds per operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

#### **§ 1470.109 Payment rate and apple operation payment.**

(a) A national per-pound payment rate will be determined after the conclusion of the application period, and shall be calculated, to the extent practicable, by dividing the \$75 million available for the Apple Market Loss Assistance Payment Program II by the total pounds of eligible production approved for payment.

(b) Each eligible apple operation's payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) A reserve may be created to handle claims but claims shall not be payable once the available funding is expended.

#### **§ 1470.110 Offsets and withholdings.**

CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of 7 CFR part 1403.

#### **§ 1470.111 Assignments.**

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

#### **§ 1470.112 Appeals.**

Any producer who is dissatisfied with a determination made pursuant to this



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subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

#### **§ 1470.113 Misrepresentation and scheme or device.**

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC in accordance with § 1470.117(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

#### **§ 1470.114 Estates, trusts, and minors.**

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

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#### **§ 1470.115 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

#### **§ 1470.116 Maintenance and inspection of records.**

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this subpart to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

#### **§ 1470.117 Refunds; joint and several liability.**

(a) In the event of an error on an application, a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, all improper payments shall be refunded to CCC together with interest and late payment charges as provided in part 1403 of this chapter.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that

is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

### **Subpart C—Apple Market Loss Assistance Payment Program III**

SOURCE: 67 FR 63243, Oct. 11, 2002, unless otherwise noted.

#### **§ 1470.201 Applicability.**

(a) The regulations in this subpart are applicable to producers of the 2000 crop of apples. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program III in accordance with section 10105 of Public Law 107-171. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

#### **§ 1470.202 Administration.**

(a) The Apple Market Loss Assistance Payment Program III shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of the Apple Market Loss Assistance Payment Program III and do not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

#### **§ 1470.203 Definitions.**

The definitions set forth in this section shall apply to the Apple Market Loss Assistance Payment Program III as follows:

*Administrator* means the Administrator, Farm Service Agency.

*Apple operation* means any person or group of persons who, as a single unit as determined by CCC, produces and markets apples in the United States.

*Application* means the Apple Market Loss Assistance Payment Application.

*Application period* means the period beginning September 30, 2002, and ending on November 8, 2002, for producers to apply for program benefits.

*CCC* means the Commodity Credit Corporation.

*County committee* means the FSA county committee.

*County office* means the local FSA office.

*Department or USDA* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency, or a designee.

*Eligible production* means apples that were produced and harvested in the

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United States anytime during the 2000 crop year, up to a maximum of 5 million pounds per apple operation.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Payment pounds* means the pounds of apples for which an operation is eligible to be paid under this subpart.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

*Secretary* means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this subpart.

*United States* means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

*Verifiable production records* means evidence that is used to substantiate the amount of harvested production reported and that can be verified by CCC through an independent source.

### § 1470.204 Time and method of application.

(a) Apple producers may obtain an application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the application at <http://www.sc.egov.usda.gov>.

(b) A request for benefits under this subpart must be submitted on a completed application as defined in § 1470.203. Applications should be submitted to the FSA county office serving the county where the apple operation is located but, in any case, must be received by the FSA county office by the close of business on November 8, 2002. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in the risk of an apple operation's total produc-

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tion must certify to the information on the application before the application will be considered complete.

(d) The apple operation requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the government is punishable by imprisonment, fines and other penalties.

### § 1470.205 Eligibility.

(a) To be eligible to receive a payment under this subpart, an apple operation must:

(1) Have produced and harvested apples in the United States at some time during the 2000 crop year;

(2) Apply for payments during the application period according to § 1470.204.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution, or their duly authorized representatives, must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) All payments under this subpart are subject to the availability of funds.

### § 1470.206 Proof of production.

(a) Apple operations selected for spot checks by CCC must, in accordance with instructions issued by the Deputy

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Administrator, provide adequate proof of the apples produced and harvested during the 2000 crop year to verify production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The 2000 crop year production must be documented using actual records.

(b) All persons involved in such apple operation producing apples during the 2000 crop year must provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on the Application. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, apple operations will be determined ineligible for benefits.

### § 1470.207 Availability of funds.

The total available program funds shall be \$94 million as provided by § 10105 of Public Law 107-171 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

### § 1470.208 Applicant payment quantity.

(a) The applicants payment quantity of apples will be determined by CCC, based on the production of the 2000 crop of apples that was produced and harvested by each operation.

(b) The maximum quantity of apples for which producers are eligible for a payment under this subpart shall be 5 million pounds per operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

### § 1470.209 Payment rate and apple operation payment.

(a) A national per-pound payment rate will be determined after the conclusion of the application period, and

shall be calculated, to the extent practicable, by dividing the \$94 million available for the Apple Market Loss Assistance Payment Program III by, for all applicants taken together, the total pounds of eligible production approved for payment.

(b) Each eligible apple operation's payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) A reserve may be created to handle claims but claims shall not be payable once the available funding is otherwise expended.

### § 1470.210 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of part 1403 of this chapter.

### § 1470.211 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with part 1404 of this chapter or successor regulations as designated by the Department.

### § 1470.212 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 11 and 780 of this title.

### § 1470.213 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

- (1) Adopted any scheme or device that tends to defeat the purpose of this program;
- (2) Made any fraudulent representation; or

#### **§ 1470.214**

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC in accordance with § 1470.217(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

#### **§ 1470.214 Estates, trusts, and minors.**

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 1470.215 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

#### **§ 1470.216 Maintenance and inspection of records.**

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under

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this program. Destruction of the records 3 years after the date of payment shall be at the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

#### **§ 1470.217 Refunds; joint and several liability.**

(a) In the event of an error on an application, a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, all improper payments shall be refunded to CCC together with interest and late payment charges as provided in part 1403 of this title.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

#### **§ 1470.218 Violations of highly erodible land and wetland conservation provisions.**

The provisions of part 12 of this title apply to this subpart.

### **PART 1480—2001 AND 2002-CROP DISASTER PROGRAM**

Sec.

1480.1 Applicability.

1480.2 Administration.

1480.3 Definitions.

1480.4 Producer eligibility.

1480.5 Time for filing application.

1480.6 Limitations on payments and other benefits.